convict the appellants upon the uncorroborated evidence of this particular witness The circumstances to which we refer are first the contradiction of Mohan Lal's evidence by Santok Singh and secondly the inadequate consideration given by the learned judge regarding the lateness of the complainant's report tp othe Police in view of the circumstances already mentioned in this judgment.

For these reasons we allowed the appeal of each of the three appellants and quashed the convictions.

Appeal Allowed.

MANICKAM v. TREMELBYE (SELANGOR) RUBBER CO., LTD.

[K.L. — Civil Application No. 33 of 1948 (Willan, C.J., M.F.) August 13, 1948]

F.M.S. Civil Procedure Code (Cap. 7) Ss. 220, 531, 532 (1) — Extension of time to appeal — Whether mistake of counsel amounts to special circumstances — Meaning of the word 'deliver'.

This was an application under section 531 of the Federated Malay States Civil Procedure (Cap. 7) to extend the time in which to appeal against a judgment of the District Court at Kuala Lumpur. The facts of the case appear sufficiently in the judgment below.

Held, (1) that Section 220 of the Civil Procedure Code only requires that the grounds of judgment should be formally handed over and unless special arrangements have been made otherwise, such handing over should take place at the District Court; (2) that an application for leave to appeal out of time can only be granted if "special circumstances render an extension just".

Cases referred to :—

(1) *In re Helsby,* (1894) 1 Q.B. 742.

(2) *In re Coles and Ravenshear,* (1907) 1 K.B. 1.

(3) *In re Manchester Economic Building Society,* 24 C.D. 488.

(4) *Cusack v. London and North Western Railway Co.,* (1891) 1 Q.B. 347.

CIVIL APPLICATION.

K. C. Chia for the Applicant.

B. J. P. Joaquim for the Respondent.

Willan, C. J. : — This is an application under section 531 of the Federated Malay States Civil Procedure Code (Cap. 7) to extend the time in which to appeal against a judgment of the District Court at Kuala Lumpur.

The facts are as follows :—

(1) The applicant was the plaintiff in Selangor District Court Civil Suit No. 22 of 1948 and, as such, sued the respondent, who was the defendant in that suit, claiming damages for malicious prosecution. The suit was finally determined on the 2nd June, 1948, when judgment was given in favour of the respondent.

(2) On the 5th of June, 1948, the firm of Advocates and Solicitors acting for the applicant applied by letter to the Registrar of the District Court asking for copies of the notes of argument, evidence, and grounds of judgment, as they had been instructed to appeal.

(3) The letter referred to in paragraph (2) above was placed on the District Court case file. It was later endorsed and initialled by one of the staff of the District Court as follows:—

"Informed notes ready on 25.6.48.
Intd: ?
25/6".

(4) An affidavit sworn and filed by Mr. Chia in this application — (Mr. Chia appeared for the applicant on this application before me and he is a member of the firm of Advocates and Solicitors acting for the applicant) — contains the following two paragraphs:—

"I have since made enquiries of the Registrar, District Court, Kuala Lumpur, and I am informed that there is a record in the file of proceedings relating to this suit that my office was notified of the record being ready by telephone on the 25th June, 1948.

There is no record in the telephone book kept in my office of such message having been received".

There is no doubt that with regard to the contents of the first of those paragraphs they refer to the endorsement set out in paragraph (3) above. As regards the contents of the second of those two paragraphs, Mr. Chia stated that the telephone operator at that time employed by his firm is no longer so employed.

(5) The grounds of judgment were collected by the said firm of Advocates and Solicitors from the District Court, Kuala Lumpur, on the 5th of July, 1948.

(6) That apart from (a) writing to the District Court for the grounds of judgment on the 5th June, 1948, and (b) collecting such grounds of judgment from the District Court on the 5th July, 1948, the firm of Advocates and Solicitors acting for the applicant did nothing more to attempt to obtain those grounds of judgment in time to lodge an appeal within the period of one month from the date of judgment — i.e. from the 2nd June, 1948 — as provided by section 531 of the Civil Procedure Code.

Section 531, which is contained in Chapter XLV of the Civil Procedure Code dealing with appeals from Inferior Courts to the High Court, is as follows :—

> No appeal shall be brought after the expiration of one month from the time when the decision appealed against was pronounced. Provided that a Judge of the Supreme Court may, if he considers that special circumstances render an extension just, give leave to appeal within such extended time after the expiration of such one month as he may think fit.

Sub-section (i) of the next section, 532, is as follows :—

> Every appeal shall be preferred in the form of a memorandum in writing signed by the appellant or his solicitor and presented to the appellate Court. The memorandum shall be accompanied by a copy of the decree appealed against and (unless the

appellate Court dispenses therewith) of the judgment on which it is founded and of the certificate of the grounds of judgment on which it is founded and of the certificate of the grounds of judgment furnished under section 220.

The last section which I need set out is section 220, referred to in section 532. It reads as follows :—

> The judgments of Courts inferior to the Supreme Court need not contain more than the points for determination and the decision thereupon; provided that on the application of any party who is dissatisfied with any judgment of a lower Civil Court within the time limited by Chapter XLV for appealing the Magistrate shall certify in writing the grounds of his judgment and deliver such certificate to the applicant.

From section 532 it is clear that before a memorandum of appeal can be filed, the appellant, or his solicitor, must be in possession of the Grounds of Judgment. In this application the solicitor for the applicant was not in possession of the grounds of judgment after the time for appealing prescribed by section 531 had expired. Accordingly he has applied for leave to appeal out of time, and such an application can only be granted if I consider "that special circumstances render an extension just".

Mr. Chia, for the applicant, submitted that the special circumstances he relied on are the failure of the District Court to deliver at his office the Grounds of Judgment before the time for appealing, prescribed by section 531, had expired.

According to him "deliver" in section 220 means delivery by the District Court at his, the solicitor's office, either by someone from the District Court attending at his office to effect such delivery, or delivery by post. He admitted, that apart from writing a letter to the District Court on 5th June, 1948, asking for the Grounds of Judgment, he had done nothing more within the time limited for bringing the appeal — i.e. within one month from the date of the District Court's decision, which was made on the 2nd June, 1948. His contention is that having written that letter he was entitled to sit back and do nothing more until the District Court delivered the Grounds of Judgment at his office.

I cannot accept such a construction of the word "deliver" in section 220 of the Civil Procedure Code. In my view that word in that section means no more than a formal handing over, and that, unless special arrangements have been made otherwise, such handing over should take place at the District Court. It was the duty of the solicitors for the applicant to exercise reasonable diligence to ascertain from the District Court, either by personal visits, or by letter, or by telephone, within the time limited for bringing the appeal, whether the grounds of judgment were ready or when they were likely to be ready. They were not entitled, having merely written one letter asking for Grounds of Judgment and nothing more, to sit back and do nothing further to attempt to get them within the time limited for bringing the appeal.

I accept the endorsement in the District Court case file and the statement of the Registrar of the District Court contained in Mr. Chia's affidavit, that the applicant's solicitors were informed by telephone on the 25th June, 1948, that the Grounds of Judgment were ready. I am not impressed by the negative assertion in Mr. Chia's affidavit that there is no note in his office of any such telephone call having been received. It would only need neglect on the part of his telephone clerk, who is no longer in his employ, to account for no such note having been made.

Accordingly I hold that there was no default on the part of the District Court. The grounds of judgment were ready for handing over within the time limited for filing the appeal, and the applicant's solicitors were informed that they were so ready. If the solicitors had attended at the District Court, either by one of themselves, or by one of their clerks, they could have obtained the Grounds of Judgment and have filed the appeal within the prescribed time.

Hence the position now reached is that by mistake on the part of the applicant's solicitors as to the construction of section 220 of the Civil Procedure Code, the Grounds of Judgment were not obtained in time to file an appeal within the prescribed time. Does such a mistake amount to special circumstances which would justify me in giving an extension of time in which to appeal?

There are several English decided cases on such a question and they arise under Order LVIII, r. 15, of the English Rules of the Supreme Court, *before* such rule was altered in 1909. *Before* that alteration an extension of time in which to appeal required special leave of the Court of Appeal.

In *Re Helsby* (1894) [1], a mistake was made by the clerk of the appellant's solicitors, but it was held by the Court of Appeal that that was not a "special circumstance" as to give the Court power under the rule for extending the time for appealing. In that case Davey L.J., at page 746 laid down the principles to be followed. He said :—

> Upon the question whether the time ought to be extended, speaking for myself, I am inclined to adopt the view of the late James L.J., that a party has a vested right in an order of the Court in his favour, and ought not to be deprived of an advantage given

to him by the rules, 'unless there has been on his part some conduct raising an equity against him', or in case of 'inevitable accident'.

Applying those principles to the application before me the respondent should not be deprived of the advantage given to him by the Civil Procedure Code, as there has been no conduct on his part raising an equity against him nor has there been an inevitable accident.

Mr. Joaquim, for the respondents, also cited the case of *In re Coles and Ravenshear*[2], where the Court of Appeal held that a mistake of counsel as to the effect of Order LVIII, r. 15, whereby an appeal was not brought until after the expiration of the time thereby allowed for appealing, was not sufficient ground for granting special leave to appeal out of time.

Mr. Chia, for the applicant, cited the cases of *In re Manchester Economic Building Society*[3], and also *Cusack v. London and North Western Railway Co.*[4].

In the former case it is quite clear from the arguments of counsel at page 491 and from the judgment of Brett M. R. in the Court of Appeal at page 498, that in that particular case the Court below had made a mistake.

With regard to the latter case, all that it decided was that the Court has a discretion in granting an extension of time in which to appeal, and that such discretion should be exercised on a consideration of the circumstances of each case as it arises.

In exercising my discretion on the circumstances of this particular application I do so following the principles laid down in the case of *In re Helsby*[1] (*supra*), with which I agree, and which were followed in the case of *In re Coles and Ravenshear* (*supra*).

Accordingly this application to appeal out of time is dismissed with costs.

Application Dismissed.

LIM HEE CHUAN v. TOH PHAIK HAR (f).

[App. Civil Juris. (Bostock Hill, J.) August 27, 1948]

[Penang — Civil Appeal (from Magistrate) No. 7 of 1948]

Minor Offence Ordinance (Cap. 24) S. 37 (1) — Maintenance of wife — Marriage according to Buddhist rites — Application to call further evidence on appeal to show husband is a Christian — Christian Marriage Ordinance (1940).

This was an appeal from a decision of the Magistrate, Penang, who made an order for the maintenance against the appellant. At the trial the respondent-wife alleged that she was married to the appellant-husband according to "Chin Choay" rites. On appeal, an application was made to call further evidence to show (1) that the appellant-husband was a Christian at the time of the alleged marriage and (2) that therefore the alleged marriage was not a valid one.

Held, that the application must be refused firstly because of the general principle that the Courts are very reluctant to give any litigant a second chance to adduce at a later stage evidence that was in his possession in the lower Court and secondly because the evidence sought to be adduced in this case would tend to disprove a marriage that has already for several years been recognised by the parties and by their families.

Cases referred to :—

(1) *Chia Teck Leong and 4 others v. Estate and Trust Agencies (1927) Limited* (1939) 8 M.L.J. 123.
(2) *Shedden v. Patrick* L.R.I. Sc. 470 at p. 545.
(3) *Nash v. Rochford Rural Council* (1917) 1 K.B. 393.
(4) *Sanders v. Sanders* 19 Ch. D. 380.
(5) *Brown v. Dean* (1910) A.C. 373.
(6) *R. v. Copestake* (1927) 1 K.B. 468 at p. 477.
(7) *Mui Siu Hing v. Lee Hong Kee* (1940) 9 M.L.J. XXV.
(8) *Elliott v. Totnes Union* 57 J.P. 151.
(9) *In re Shephard, George v. Thyer* (1904) 1 Ch. 456.

CIVIL APPEAL FROM MAGISTRATE.

F. G. Pooley for the Appellant.

R. D. Hume for the Respondent.

Bostock Hill, J. : — This is an appeal from a decision of the Magistrate, Penang, under Section 37 (1) of the Minor Offences Ordinance (Cap. 24).

The Respondent had applied for an Order for maintenance against the Appellant alleging that she had married him in 1943 according to "Chin Choay" rites. A Certificate of the marriage (which appears to have been a Buddhist ceremony) was put in as Exhibit P. 15. Two children were born of the marriage which was admitted by Appellant both in his evidence in the Magistrate's Court and in correspondence between the Parties before the case went to Court.

It is sufficient to say that there were disputes between the Parties and that they separated and finally the Respondent applied to the Magistrate for an Order for maintenance.

The Magistrate took the view that the Appellant was entirely in the wrong and had behaved very badly, and made an Order for $40/- per month against him in favour of the Respondent.